

40 North Central Avenue
Phoenix, Arizona 85004-4429
Facsimile (602) 262-5747
Telephone (602) 262-5311

Randolph J. Haines – State Bar No. 005440
Email: RJH@lrlaw.com

AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P.
1900 Pennzoil Place – South Tower
711 Louisiana
Houston, Texas 77002
Telephone (713) 220-5800
Facsimile (713) 236-90822

H. Rey Stroube, III-Texas State Bar No. 19422000
S. Margie Venus-Texas State Bar No. 20545900
E-mail: efiler@akingump.com
Attorneys for Debtor BCE West, L.P., et al.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In Re:) Chapter 11
)
) Case Nos. 98-12547 through
BCE WEST, L.P., et al.,) 98-12570-ECF-CGC
)
Debtors.) Jointly Administered
)
EID: 38-3196719) **EMERGENCY MOTION FOR**
) **EXPEDITED HEARING ON MOTION**
) **TO AMEND ORDERS ESTABLISHING**
) **BIDDING PROCEDURES AND**
) **APPROVING BID PROTECTION,**
) **BREAK-UP FEE AND EXPENSE**
REIMBURSEMENT (DE # 1090)

BCE West, L.P., Boston Chicken, Inc., Mayfair Partners, L.P., BC Great Lakes, L.L.C.,
BC GoldenGate, L.L.C., B.C.B.M. Southwest, L.P., BC Boston, L.P., BC Superior, L.L.C., BC
Heartland, L.L.C., BC Tri-States, L.L.C., Finest Foodservice, L.L.C., BC New York, L.L.C.,
R&A Food Services, L.P., P&L Food Services, L.L.C., Mid-Atlantic Restaurant Systems, Inc.,
BCI Massachusetts, Inc., BCI Southwest, Inc., BC Real Estate Investments, Inc., BCI Mayfair,
Inc., Progressive Food Concepts, Inc., BCI R&A, Inc., BCI West, Inc., BCI Acquisition Sub,

1 L.L.C., and Buffalo P&L Food Services, Inc., debtors and debtors in possession (the “Debtors”)
2 request the Court to set an expedited hearing with respect to the Debtors’ Motion (DE # 1090) To
3 Amend Orders Establishing Bidding Procedures and Approving Bid Protection, Break-Up Fee and
4 Expense Reimbursement (DE ## 989, 1059). In support of this Motion, Debtors state as follows:
5

6 **I. JURISDICTION**

7 1. Pursuant to 28 U.S.C. §§ 1334 and 157, the Court has jurisdiction to hear this
8 motion. Pursuant to 28 U.S.C. § 157(b)(2)(A) and (O), this Motion presents a core proceeding.
9 The relief requested may be granted pursuant to Sections 105 and 363 of the Bankruptcy Code.

10 **II. BACKGROUND**

11 2. On October 5, 1998 (the “Petition Date”), the Debtors filed their voluntary
12 petitions for relief under Title 11, Chapter 11 of the United States Code. Since the Petition Date,
13 the Debtors have continued to operate their businesses and manage their properties as debtors-in-
14 possession pursuant to 11 U.S.C. §§ 1107 and 1108. The separate petitions are now jointly
15 administered pursuant to an order of this Court.
16

17 3. On June 21, 1999, Debtors filed their Motion or Order Establishing Bidding
18 Procedures and Approving Bid Protection, Break-Up Fee and Expense Reimbursement (the
19 “Bidding Procedure Motion”) (DE # 943). The Court granted that motion on June 30, 1999
20 (DE # 989). On July 23, 1999, the Court entered its Order Establishing Overbid Procedures
21 (DE # 1059).
22

23 4. Debtors have now obtained a bid from Boston Market Acquisition Company
24 (“BMAC”), which Debtors accepted on August 3, 1999. That bid, however, is not entirely
25
26

1 consistent with the June and July Orders Establishing Bidding Procedures. Consequently
2 Debtors have today filed a Motion To Amend Orders Establishing Bidding Procedures and
3 Approving Bid Protection, Break-Up Fee and Expense Reimbursement (the “Motion”).

4 5. The purpose of the Motion is to amend the June and July orders establishing
5 bidding procedures to permit Debtors to proceed with the bid, execute a definitive asset purchase
6 agreement, receive overbids, select a winning bid and file a plan of reorganization. Without the
7 amendments requested, Debtors would not have a bid on which to proceed to preparation, filing
8 and confirmation of a plan. Not only do the terms of the bid vary somewhat from the Orders
9 establishing bidding procedures, but it is also necessary to modify the schedule set forth in those
10 orders, and to permit Debtors to proceed with the bid prior to, or without, obtaining the consent
11 of the Agents.
12

13 6. Given the very tight time constraints imposed on the Debtor by the prior orders
14 and by the amended DIP Facility, Debtors require a very accelerated hearing on their Motion to
15 Amend Bidding Procedures Order in order for that relief not to be rendered moot by events and
16 passage of time. Consequently Debtors request that the Motion be set for hearing as soon as time
17 is available on the Court’s calendar, preferably on the afternoon of Thursday, August 5, after the
18 Court’s preliminary stay relief calendar, at 3:00 or 4:00 pm.
19
20
21
22
23
24
25
26

1 Respectfully submitted this 3rd day of August, 1999.

2 DEBTORS AND DEBTORS IN POSSESSION

3 By: /s/ Randolph J. Haines
4 One of their Attorneys

5 AKIN, GUMP, STRAUSS, HAUER &
6 FELD, L.L.P.
7 H. Rey Stroube, III
8 S. Margie Venus
9 1900 Pennzoil Place – South Tower
711 Louisiana
Houston, Texas 77002
(713) 220-5800
(713) 236-0822 (fax)

10 - and -

11 LEWIS AND ROCA LLP
12 Randolph J. Haines
13 40 North Central Avenue
Phoenix, Arizona 85004-4429
(602) 262-5311
(602) 262-5747 (fax)

14 **CERTIFICATE OF SERVICE**

15 The undersigned hereby certifies that on August 3, 1999, the foregoing document was
16 served by E-mail on all parties on the Master Service List #11 dated July 22, 1999, who have
17 provided email addresses.

18 /s/ Marilyn Schoenike
19
20
21
22
23
24
25
26